


Substantial Disruption



Arizona's Voucher Bill and the New Segregation

By Mike Tully

When the Arizona Legislature passed, and Governor Ducey signed [Senate Bill 1431](#), they opened the door to a substantial replacement of public schooling with a taxpayer-supported system of private and parochial schools. Proponents claim their objective was to maximize school choice, despite [insufficient evidence](#) it will improve educational outcomes. Critics claim [there is no improvement](#) and the [real purposes](#) are to undermine teachers' unions and dismantle the public school system in furtherance of an ideology that decries what some deride as "[government schools](#)." Whatever the consequences, there is a danger that has not received sufficient attention: creation of a new system of segregated schools likely to be more expansive, insidious and dangerous than the segregation that led to [Brown vs Board of Education](#).

Arizona's school vouchers are called "Empowerment Scholarship Accounts (ESA)" and first appeared in the 2011-2012 legislative session. That early trickle was limited to special needs students, but has expanded to include siblings of ESA recipients, wards of the court, children of active military personnel or those killed on active duty, as well as children who live on tribal lands and students who attend public schools designated as "failing" by the State. This year, the Legislature kicked aside eligibility requirements and made all 1.1 million students in Arizona potentially eligible. The eligibility will grow incrementally through the 2020-2021 school year and the legislation contains a cap at approximately 30,000 students. A proponent of the bill [already predicted](#) the cap will be lifted. She might be right, given the steady growth over the last half dozen years. If the cap is lifted and ESAs made available to every student in Arizona, the result would be a dual segregated school system.

ESAs are available to students of "qualified schools," [defined](#) as "a nongovernmental primary or secondary school or a preschool for pupils with disabilities that is located in this state and that does not discriminate on the basis of race, color or national origin." That is a very narrow range of protections that excludes discrimination based on sex, religion and disability, categories otherwise protected by state and federal law. Qualified schools could discriminate on the basis of sex, religion and disability without losing their ESA funds. That is not an accident. The rules of [statutory construction](#) say exclusions are considered to be deliberate. The Legislature knew what it was doing.

The narrow protection for race, color and national origin is marginal at best. ESA statutes do not include an enforcement mechanism against schools. While the Department of Education could argue that such discrimination means the school is not "qualified" and not eligible to accept ESA students, enforcement would be an uphill battle because [the law](#) "does not permit any government agency to exercise control or supervision over any nonpublic school or homeschool" and, should the State question whether a school is qualified, authorities would have to prove "the law is necessary and does not impose any undue burden on qualified schools." The ESA statutes effectively remove all civil rights protections for ESA students. Private and parochial schools are largely exempt from civil rights laws unless they accept federal funds.

In Arizona, because student aid is computed on a per-student basis, the money follows the student. We have seen the Tucson Unified School District (TUSD) shrink proportionately to the growth of charter schools that siphon away its students. But charter schools are public schools that are subject to state and federal civil rights laws. When students leave a traditional school district for an ESA qualified school, the money also [follows the student](#). The student not only leaves the former school behind; the student also leaves civil rights protections behind, as well as [protection from bullying](#). State bullying statutes do not apply to private and parochial schools.

This is not to suggest that private and parochial schools intentionally engage in discrimination, but their intent is secondary to the intent of parents who seek them out. Humans act in their own self-interest and even religious institutions may be inclined to “see no evil” and “hear no evil” when parents choose their schools for reasons based as much on race and class as curriculum. If the cap on ESAs is lifted, there will be a substantial transfer of funds from traditional public schools to private and parochial schools, many of which charge tuition that exceeds the amount of the voucher and eliminates the poor. As the number of ESA recipients grows, Arizona schools will devolve into a dual system divided by race, national origin, wealth and disability. ESA schools will be whiter and wealthier and will have very few disabled students. Traditional public schools will have an over-representation of children of color, children from lower economic households, immigrant children (documented and undocumented) and children with disabilities -- separate but far from equal.

This is not an unrealistic concern. When I worked for TUSD years ago I asked the Department of Education how many Special Education students attended traditional schools versus charter schools. In traditional schools, eleven percent of the student population was Special Ed students; in charter schools, only four percent. As recently as last year the charter school population [did not reflect](#) the general population. If these divisions occur in public charter schools, which are subject to civil rights laws, how severe will they be when students leave traditional public schools for schools that are not?

Empowerment Scholarships do not promote school choice; they promote segregation.